

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Eligibility for the)
Specialized Mobile Radio)
Services and Radio Services)
in the 220-222 MHz Land Mobile)
Band and Use of Radio Dispatch)
Communications)

GN Docket No. 94-90

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COMMENTS OF WATERWAY COMMUNICATIONS SYSTEM, INC.

Waterway Communications System, Inc. (WATERCOM) respectfully submits its comments responsive to the Notice of Proposed Rulemaking issued by the Commission concerning, inter alia, provision of dispatch service by Commercial Mobile Radio Service (CMRS) providers.^{1/}

I. STATEMENT OF INTEREST.

WATERCOM is the licensee of an Automated Maritime Telecommunications System (AMTS), licensed under Part 80, Subpart J, of the Commission's rules and regulations. The WATERCOM system, located along the Mississippi, Illinois and Ohio Rivers and the Gulf Intracoastal Waterway, provides telecommunication service to the maritime industry operating along the inland waterway transportation network. WATERCOM renders interconnected telecommunications service to the user public, and its service has been classified as a CMRS by the Commission in the Second Report and Order in GN

^{1/} 59 Fed. Reg. 42563 (Aug. 18, 1994).

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Docket No. 93-252, Regulatory Treatment of Mobile Services,
9 FCC Rcd 1411, 1448 (1994).

II. COMMENTS.

The Commission has invited commenters to address the treatment of dispatch service offered by common carriers other than land mobile service providers, including marine carriers. The Commission observes that prior to reenactment of Section 332 of the Communications Act of the Omnibus Budget Reconciliation Act of 1993 (OBRA '93) the dispatch ban applied only to land mobile services. The Commission has questioned whether the Section 332 ban should be viewed as applying to CMRS providers other than those offering land mobile services based upon the legislative history of the Act, and the Commission recites its conclusion that Congress did not intend to extend the dispatch ban when it reenacted section 332 in OBRA '93.

The Commission's conclusions are consistent with the comments submitted by WATERCOM in GN Docket No. 93-252, the CMRS implementation proceeding.^{2/} The Commission did not reach a decision on the issue in GN Docket No. 93-252, but rather deferred the issue to a subsequent proceeding.^{3/}

^{2/} See, Waterway Communications System, Inc., Comments, at pp. 7-8 (Nov. 8, 1993).

^{3/} Second Report and Order at ¶ 105, 9 FCC Rcd 1411 (1994).

WATERCOM further raised this issue in a Petition for Clarification and/or Partial Reconsideration in Docket No. 93-252.^{4/}

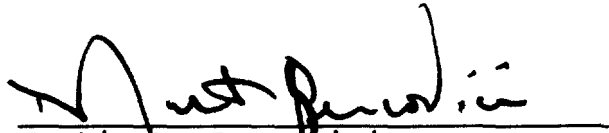
WATERCOM's views currently are on record before the Commission and fully support the conclusion reflected in the instant Notice that Congress did not intend to extend the dispatch ban to other than land mobile services, but rather intended to repeat and incorporate the prior prohibition in reenactment of Section 332 of the Act. As WATERCOM noted in its GN Docket No. 93-252 discussion of this issue, what now is considered to be dispatch communications service has been part and parcel of the maritime communications service offering since the early days of radio. There simply is no legal, policy or regulatory reason for suddenly restricting maritime carriers, and the legislative background of the Section 332 ban clearly evidences that the prohibition was intended to relate to land mobile service only. Accordingly, whether by interpretation or by the power specifically conferred upon the Commission by Congress to terminate the dispatch ban, in whole or in part, WATERCOM respectfully urges the Commission to provide that the ban on dispatch communications is not applicable to maritime commercial mobile radio service providers.

^{4/} WATERCOM Petition at pp. 1-3 (May 19, 1994); see also n.84 of the instant Notice.

III. CONCLUSION.

WHEREFORE, THE PREMISES CONSIDERED, Waterway Communications System, Inc. respectfully urges the Federal Communications Commission to CLARIFY, by interpretation or by repeal, that the ban on dispatch service does not apply to maritime CMRS.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Martin W. Bercovici", is written over a horizontal line.

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Date Due: September 21, 1994